

FREEDOM OF INFORMATION ACT

Public Act 96-542

Presented by

Peter K. Wilson, Jr.

And

Bernard K. Weiler

Mickey, Wilson, Weiler, Renzi & Andersson, P.C.

Public Act 96-542

- This is a summary only of some of the more significant changes
- Effective January 1, 2010
- Amends the Open Meetings Act (OMA)
- Amends the Freedom of Information Act (FOIA)

Public Act 96-542

- ▣ The public is entitled to full and complete information regarding the affairs of government.
- ▣ It is the public policy of the State that access by all persons to public records promotes the transparency and accountability of public bodies.
- ▣ It is a fundamental obligation to provide public records as expediently and efficiently as possible.

Public Policy and Unfunded Mandate

- ▣ Section 1, as amended, states:
- ▣ *The General Assembly recognizes that this Act imposes financial obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.*

Scope of Changes

- ▣ Expands definition of documents subject to be produced
- ▣ Changes procedures for response to request
- ▣ Narrows exemptions
- ▣ Imposes stiffer penalties for non-compliance
- ▣ Adds enforcement powers through the Attorney General's office

Public Act 96-542

- ▣ Creates the office of Public Access Counselor within the Office of the Attorney General

Public Access Counselor (PAC)

- ▣ Responsible for developing and administering electronic training program to designated representatives of the public body with respect to compliance with the FOIA.
- ▣ Renders “binding” decisions on violations of and compliance with the FOIA

FOIA Training

- ▣ District must designate list of persons as FOIA compliance officers
- ▣ Complete training before July 1, 2010
- ▣ Responsible to develop list of documents or categories of records that will be immediately disclosed on request, which list is to be posted on the website along with a description of the district, its organizational structure, and procedure to submit records requests
- ▣ Receive and prepare timely responses to FOIA requests

Public Records under FOIA

- ▣ Public records means essentially everything pertaining to the transaction of public business, regardless of form, prepared for, used by, or in the possession of the public body or school district
- ▣ Covers electronic information, including email
- ▣ Includes information related to the district's function held by third parties contracted by the school district

FOIA Request

- ▣ A request, while in writing, may take a number of forms, including fax or electronic
- ▣ The Act requires strict compliance with all timelines
- ▣ Any request must be immediately delivered to the FOIA Compliance Officer

FOIA Compliance

- ▣ District can require request to be in writing, but not any specific form
- ▣ Must keep strict record of request including:
 - Noting on the request the date received
 - Compute date of compliance on the request
 - Maintain electronic or paper copy of the request until acted on
 - Create file for retention of original request, a copy of the response, and all communications regarding same

FOIA Compliance

- ▣ Must respond within 5 working days for most requests, including a notice of extension
- ▣ Extension limited to 5 working days and then only for specified reasons
- ▣ Parties may agree in writing to longer extension
- ▣ Commercial requests up to 21 days.
- ▣ Fees may not be charged for the first 50 pages of black & white copies, then the fee is limited to 15 cents per page. Color and odd sizes are actual cost excluding labor.

FOIA Failure to Respond in Time

- ▣ Copy fees may not be charged for late response
- ▣ Ability to assert some otherwise permitted exemptions is waived, *e.g.* that request is unduly burdensome
- ▣ Possible fines and costs if failure determined to be willful

FOIA Denials

- ▣ All records are presumed to be open for inspection or copying
- ▣ Denials, other than for personal invasion of privacy, must be specific including not only the citation to the exemption, but a summary of the factual and legal basis
- ▣ District must prove any claimed exemption by clear and convincing evidence

FOIA Personal Information Exemption

- ▣ Exemption for personal information now defined as “unique identifiers” such as SS number, driver’s license number, employee ID number, personal phone or email, etc.
- ▣ Also exempt if a “clearly unwarranted invasion of personal privacy”
- ▣ To deny request for this reason must notify both the requestor and the PAC in advance of the intent to deny and the PAC must concur

Personal Information Exemption cont'd

- ▣ Retains exemption for personal information that is a “clearly unwarranted invasion of personal privacy....”
- ▣ “Unwarranted invasion of personal privacy” means information that is highly personal or objectionable to a reasonable person and outweighs the public interest in obtaining information.
- ▣ Does not include information that “bears on the public duties of public officials”

FOIA Penalties

- ▣ If court determines that the district willfully or intentionally failed to comply, or otherwise acted in bad faith, then
 - Court is mandated to impose a fine of not less than \$2500 nor more than \$5000 for each occurrence
 - Requestor shall be awarded reasonable attorneys fees and costs